

Nabco Corporation/WCN Corporation and Nabco Electric Corp. and International Brotherhood of Electrical Workers Local No. 48, Case 36-CA-4054

May 2, 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND
HUNTER

On September 10, 1982, Administrative Law Judge Roger B. Holmes issued the attached Decision in this proceeding. Thereafter, Respondents filed exceptions limited to the appropriateness of the recommended remedy, a supporting brief, and a motion to reopen the hearing, and the General Counsel and the Charging Party each filed answering briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.¹

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondents, Nabco Corporation/WCN Corporation and Nabco Electric Corp., Portland, Oregon, their officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

¹ In their motion to reopen the hearing in this matter, Respondents reiterate the contention made in their exceptions that the Administrative Law Judge erred in issuing a remedial order not specifically requested by the General Counsel or the Charging Party; Respondents argue that a further hearing is necessary to allow them an opportunity to present evidence concerning the proper remedy or remedies to be granted in this proceeding. We find no merit in Respondents' motion.

It is well settled that the Board's power to remedy unfair labor practices is not limited by the parties' failure to request or oppose any specific remedy. During the hearing in this matter, all parties were afforded the opportunity to introduce evidence regarding all issues, including remedial matters. In this regard, we note that the terms of the Administrative Law Judge's recommended Order are typical remedies for unfair labor practices such as those alleged and found herein; thus, Respondents cannot claim unfair surprise. Nor have Respondents proffered any evidence of unusual circumstances which would warrant altering the Administrative Law Judge's recommended Order. Accordingly, we deny Respondents' motion to reopen the hearing in this matter.

DECISION

Preliminary Matters

ROGER B. HOLMES, Administrative Law Judge: Based on an unfair labor practice charge, which was filed on January 18, 1982, and which was amended on March 17, and 25, 1982, by International Brotherhood of Electrical Workers Local No. 48, the General Counsel of the Board issued on March 31, 1982, a complaint alleging violations of Section 8(a)(1), (3), and (5) of the Act by Nabco Corporation/WCN Corporation and Nabco Electric Corp.

With regard to the names of the corporations to be discussed herein, the names sometime appear in all capitals in certain exhibits, and sometime in capitals and lower case. In the transcript, the names usually appear in the latter manner, although at times an abbreviated reference to the entity appears either in the question or in the answer. Except where material is being quoted, for convenience I will hereafter use the names as they appear in certain corporate documents, as follows: Nabco Industries, Inc. (see G.C. Exh. 22); Nabco Corporation (see G.C. Exh. 17); WCN CORP. (see G.C. Exh. 17); and Nabco Electric Corp. (see G.C. Exh. 24).

The hearing in this proceeding was held on June 29 and 30, 1982, at Portland, Oregon. The time for the filing of post-hearing briefs was set for August 4, 1982.

At the same time that she filed her post-hearing brief, counsel for the General Counsel also filed separately a "Motion to Reopen Record." The General Counsel seeks to have certain documents received into evidence. She urges that she obtained those documents after the hearing had ended from the motor vehicle division of the State of Oregon.

In its decision in *Owen Lee Floor Service*, 250 NLRB 651 (1980), the Board held, in part, at footnote 2, with regard to a motion to reopen the record to receive a certain memorandum:

We deny the motion. First, Respondent has not shown that the memo it seeks to introduce has become available only since the close of the hearing. Second, Respondent has not shown that the evidence was newly discovered. Newly discovered evidence is evidence which was in existence at the time of the hearing, and of which the movant was excusably ignorant. A motion seeking to introduce evidence as newly discovered must also show facts from which it can be determined that the movant acted with reasonable diligence to uncover and introduce the evidence. *N.L.R.B. v. Joseph E. Decker and Sons*, 569 F.2d 357, 363-364 (5th Cir. 1978).

In accordance with the Board's decision, I conclude that the General Counsel has not established that the documents she now seeks to introduce have become available only since the hearing closed. I further conclude that it has not been established that the documents in question are "newly discovered evidence" in the sense that such documents could not have been uncovered with reasonable diligence during the time of the hearing and offered into evidence at that time. Therefore, I

hereby deny the General Counsel's motion to reopen the record in this proceeding. I shall place those documents in the rejected exhibit file.

In addition to the motion described above, counsel for the General Counsel filed on August 5, 1982, a "Motion to Strike" wherein she "moves to strike Respondent's brief and affidavits attached thereto in their entirety." In the General Counsel's view, the affidavits are hearsay documents which were not offered during the time of the hearing. The General Counsel also pointed out that Respondent's brief had not been served at that time on the attorney for the Charging Party who had appeared at the hearing.

By letter dated August 5, 1982, the attorney for the Charging Party stated that he had not received a copy of the brief filed by the attorney for Respondents. He urged that Respondents' brief should be disregarded because of the failure to comply with the requirements of Section 102.42 of the Board's Rules and Regulations.

By letter dated August 11, 1982, the attorney for Respondents submitted an "Affidavit of Mailing" which indicates that a copy of the Respondents brief was mailed on that date to the attorney for the Charging Party.

Respondent's post-hearing brief indicates that Respondents were submitting "the attached argument, brief and affidavits as originally filed in the United States District Court with respect to an allied petition for injunction."

After considering the foregoing, I hereby deny the portion of the General Counsel's motion to strike insofar as that motion relates to the legal argument made in Respondents' post-hearing brief, and I hereby deny the Charging Party's request to disregard Respondents' brief. The reason is that the attorney for Respondents has now served a copy of his earlier brief, which had been filed previously in the injunction proceeding, on the attorney for the Charging Party. It appears that the attorney for Respondents sought to remedy the omission of the service of his brief in this proceeding on one of the parties after that omission was called to his attention by the other parties. As a result, it appears that service on the attorney for the Charging Party was accomplished about a week after the due date for the filing of the briefs.

With regard to the portion of the General Counsel's motion to strike which relates to the affidavits attached to Respondents' post-hearing brief, I hereby grant that part of her motion. See the Board's decision in *Inland Steel Co.*, 259 NLRB 191 (1981); *Natural Heating Systems*, 252 NLRB 1082, fn. 1 (1980); and *Operating Engineers Local 18 (Ohio Contractors)*, 220 NLRB 147, fn. 3 (1975). I shall place those documents in the rejected exhibit file.

FINDINGS OF FACT

I. THE WITNESSES AND CREDIBILITY RESOLUTIONS

Seven persons were called to testify as witnesses at the hearing in this proceeding. In alphabetical order by their last names, they are: John Cossu, who is a former employee of Nabco Corporation; Robert E. Hall, who is the business manager and financial secretary of the Charging Party; Newall W. Joy, who is a business representative

of the Union; Allan Minor, who is a former employee of Nabco Corporation; Walter C. Nab, who is the president of the three corporations named as Respondents in this case; Dorothy Nichols, who is the vice president and secretary-treasurer of Nabco Industries, Inc. and also of WCN Corp., and who is the secretary-treasurer of Nabco Electric Corp.; and Mildred Powell, who is a former office employee of Nabco Corporation, and who is the office manager and the majority stockholder of Nabco Electric Corp.

In making the findings of fact herein, I will rely on portions of the testimony from each witness who appeared at the hearing. In doing so, I have considered whether the record reflects the basis for the witness' knowledge of the matters about which he or she testified. I have also given consideration to the witness' identification with one of the parties to the proceeding, and whether that witness would likely have an interest in the outcome of the litigation. I have also considered whether the account given by the witness is consistent with, or inconsistent with, the matters related by other witnesses and with documentary evidence. Some of the recollections of the witnesses differed with regard to these past events. I found that Hall had the best recollection of the meeting which took place in January 1982 among Hall, Joy, Nab and Nichols. I will base the findings of fact upon Hall's account. In addition, I found that Minor had the best recollection of the meeting held on December 30, 1981, with Nab and the employees. I will rely on Minor's version. In summary, I will set forth the findings based on the portions of the testimony which appear to me to be accurate and reliable. (See, for example, *Krispy Kreme Doughnut Corp.*, 245 NLRB 1053 (1979).) In addition, many of the findings of fact will rest upon documentary evidence introduced at the hearing.

One additional comment should be made for the purpose of clarity. When reference is made later herein to "Nichols," that reference will be to Dorothy Nichols, who is one of the witnesses described briefly above. When reference is made to Burt Nichols later herein, both his first and last name will be given to avoid confusion.

II. CERTAIN MATTERS PERTAINING TO NECA AND THE UNION

Many of the facts to be set forth in this section are not in dispute. For example, it was admitted at the hearing that the Union involved herein is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act. (See tr. p. 8.)

The following admissions are set forth in paragraphs 7, 8 and 9 of Respondents' answer to the General Counsel's complaint:

7. Respondents admit the NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION was an organization composed of employers engaged in the electrical contracting business existing, in part, for representing employer members and other employers in negotiating collective bargaining agreements with Union.

8. For itself and no other, WCN admits execution of a letter of assent "A" respecting NECA.

9. Respondents admit NECA including its member employers and other employers collectively received gross annual revenues in excess of \$500,000.00

The allegations set forth in paragraph 4(e) of the General Counsel's complaint were admitted to be true. Paragraph 4(e) reads: "NECA is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act."

At the hearing, the allegations of paragraph 11 of the General Counsel's complaint were admitted to be true. Paragraph 11 alleges: "All material handlers employed by members of NECA, including Respondent, excluding all other employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act."

It was stipulated at the hearing that, "The union has been recognized by NECA and Respondent. Such recognition has been embodied in successive collective bargaining agreements, the most recent of which has effective dates from January 1, 1982 through December 31, 1984." That stipulation pertained to the "material handlers unit" described in the preceding paragraph.

At the hearing, the allegations in paragraph 13 of the General Counsel's complaint were admitted to be true. Paragraph 13 alleges: "At all times since at least 1967, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the employees described in paragraph 11, for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment."

At the hearing, the allegations in paragraph 20 of the General Counsel's complaint were admitted to be true. Paragraph 20 alleges: "In December 1981, NECA and the Union reached full agreement on a collective bargaining contract covering employees in the unit described above in paragraph 11, said agreement having effective dates from January 1, 1982 through December 31, 1984."

In paragraph 12 of Respondent's answer to the General Counsel's complaint, the following is stated: "Respondents admit Neca and the Union reached a collective bargaining agreement with respect to the categories of employees engaged in electrical work described in paragraph 7, which said contract term commences January 1, 1982 through December 31, 1984." Paragraph 7 of the General Counsel's complaint, which previously had been denied, describes what was characterized by Hall as being a unit of inside wiremen, that is, journeymen electricians and apprentices, as distinguished from the unit of material handlers referred to above.

In paragraph 11 of Respondent's answer to the General Counsel's complaint, the following is stated: "Respondent WCN for itself and no other admits Union was in December, 1981 the exclusive representative of the persons named in section 16 of the Complaint." Para-

graph 16 of the General Counsel's complaint pertains to the termination of the six alleged discriminatees.

General Counsel's Exhibit 7 is a copy of a document entitled, "Letter of Assent-A." The document indicates that it was signed by Nab as president of Nabco Corporation on December 27, 1979, and that it was signed by Hall as business manager of the Union on January 3, 1980. Among other things, the document authorizes the Oregon-Columbia Chapter of NECA to act as the collective-bargaining representative of Nabco Corporation with regard to the "inside labor agreement" between NECA and the union. The authorization is to remain in effect until terminated by the employer by giving written notice to NECA and the union at least 150 days prior to the anniversary date of the agreement.

General Counsel's Exhibit 8 is a copy of another document entitled, "Letter of Assent-A." The document indicates that it was signed by Nab as president of Nabco Corporation on August 7, 1978, and by the previous business manager of the union on September 8, 1978. It is similar in nature to General Counsel's Exhibit 7 except that the document pertains to the "material handlers labor agreement."

Introduced into evidence as General Counsel's Exhibits 3, 4, 5, and 6 were copies of collective-bargaining agreements between NECA and the union with regard to both the material handlers unit and the inside wiremen's unit.

Hall said that prior to January 1, 1982, the union did not receive a copy of a letter from Nabco Corporation to NECA by which Nabco Corporation sought to withdraw its delegation of bargaining authority to NECA. (See sec. 7 herein with regard to a letter which was sent on June 28, 1982, to NECA.)

Introduced into evidence as General Counsel's Exhibit 9 was a copy of a document dated December 30, 1981, and entitled, "Monthly Payroll Report for Electrical Contractors" with the name of Nabco Corporation towards the top of the document. Towards the bottom of the document, the firm name is typed as "WCN CORP. (formerly Nabco Corporation)." A photostat of a bank check attached to the document has a similar designation. The report pertains to six employees who performed work in December 1981. Among other things, the report lists for each employee: their job classification; the number of hours worked; the employee's gross earnings; the amount of vacation contributions; the amount of health and welfare contributions; the amount of local pension contributions and the amount for the credit union. The document indicates that it is a "final report." The union received a copy of the report in January 1982.

According to Hall, he "was aware of a problem with Nabco Electric preceding that date, and I was watching to make sure the report came in." Hall said he discussed with the employees involved whether or not they had worked "for Nabco in December 1981." Hall is a trustee of the local union pension fund, the health and welfare fund, and the apprenticeship and training fund. He acknowledged at the hearing that another electrical contractor, who had been subject to a collective-bargaining agreement with the Union, had timely repudiated the

agreement, and that several other employers had attempted to do so but they were untimely. He considered the foregoing situations to be "unusual events." Therefore, he paid particular attention to the report which was later introduced into evidence as General Counsel's Exhibit 9. He said at the hearing that to the best of his knowledge the report was correct.

According to Hall, Nab has not made any payments on behalf of employees into the union fringe benefit funds for the year 1982.

III. CERTAIN MATTERS PERTAINING TO THE BUSINESS OPERATIONS OF NABCO INDUSTRIES, INC.

Dorothy Nichols is the vice president and the secretary-treasurer of Nabco Industries, Inc. She has held those offices since the inception of that corporation in August 1972. Nichols has owned 95 percent of the shares of stock of Nabco Industries, Inc., since August 1972. She paid \$950 for that stock in 1972.

Nichols has performed services in the office for Nabco Industries, Inc., Nabco Corporation, and Nabco Electric Corp., but she has not received any compensation for her work.

Walter C. Nab is the president of Nabco Industries, Inc., and he owns 5 percent of the shares of stock in that corporation. Nab and Nichols are the two directors of that corporation.

Nabco Industries, Inc., has its offices located at 7530 Southeast Foster Road in Portland. Nabco Corporation, WCN Corp., and Nabco Electric Corp. also have had their offices located at that same address.

Prior to January 2, 1975, Nab owned all of the stock of Nabco Corporation. On January 2, 1975, Nab transferred his ownership of all of the shares of stock of Nabco Corporation to Nabco Industries, Inc. (See G.C. Exh. 20 and 21.) Nabco Corporation thereby became a wholly owned subsidiary of Nabco Industries, Inc.

Nichols has resided at 2306 Southeast 52d in Portland since 1959. Nab has resided at that same house since 1972. At the hearing, Nichols gave the following explanation with regard to Nab's living at her residence since 1972: "He sold his apartment house and, therefore, needed a place to stay, and he moved to our house. I had my family and everyone, and he moved to our house as a temporary arrangement. The temporary arrangement got along fine, and he stayed. He's been there ever since, so have several other people."

Nichols said that she and Nab had taken trips together to Idaho and to Europe. Most of the time, they eat their meals together. Former employee of Nabco Corporation, John Cossu, observed that Nab and Nichols kissed each other when one of them was about to leave the Company's facilities. The Company's Christmas party in December 1981 was held at Nichols' home. According to Nichols, there is no marital relationship between her and Nab.

Nichols also owns the property located at 4449 Southwest Council Crest Drive in Portland. That property was conveyed to her on May 1, 1981, by Nab who reserved a life estate in the property. (See G.C. Exhs. 14 and 15.)

Mildred Powell, who is the niece of Nichols, resided at Nichols' home for a period of time until June 1980. Powell then moved to Vancouver, Washington, where she was living at the time of the hearing. Powell said that she had not performed any work for Nabco Industries, Inc., but she has taken telephone messages at the office for Nab and Nichols with regard to the business of that corporation.

Introduced into evidence as General Counsel's Exhibit 16 were copies of promissory notes from Nabco Industries, Inc., payable to the order of "Walter C. Nab and/or Dorothy D. Nichols and upon the death of either of them, then to the order of the survivor." The total amount of the notes is \$109,825.00.

In December 1981, foreclosure proceedings were pending against the major property of Nabco Industries, Inc. That property was a 57 unit condominium and some adjacent acreage. An entity identified as Walter E. Heller was described as being the construction lender to which Nabco Industries, Inc., owed \$2.7 million at an interest rate of 5 percent over the fluctuating prime rate. Heller held mortgages or trust deeds on the condominiums and certain real property. (See G.C. Exh. 23 regarding Heller.) The foreclosure sale was originally scheduled for March 1982, but a stay in bankruptcy court proceedings prevented the sale at that time. Subsequently, the stay was lifted, and the foreclosure sale was rescheduled for September 3, 1982.

Nabco Industries, Inc., is the sole shareholder of Nabco Corporation. In December 1981, Nabco Industries, Inc., owed approximately \$240,000 to Nabco Corporation for materials and for work performed as an electrical contractor during 1980 and 1981. As a result of the failure of Nabco Industries, Inc., to pay Nabco Corporation, the latter corporation had debts amounting to \$80,000 which Nabco Corporation owed to its suppliers and to Nichols. Introduced into evidence as General Counsel's Exhibit 29 was a copy of a balance sheet which Nabco Industries, Inc., had maintained on accounts payable and accounts receivable pertaining to its Kimberly Square condominiums in the State of Washington. The document reflects the billing dates of work performed by Nabco Corporation for Nabco Industries, Inc.

Nabco Industries, Inc., filed a petition in bankruptcy in March 1982. At that time, its assets were \$6 million, and the liabilities of the corporation were between \$4.5 million and \$5 million. Introduced into evidence as General Counsel's Exhibit 23 were copies of papers filed by Nabco Industries, Inc., in the United States Bankruptcy Court.

IV. CERTAIN MATTERS PERTAINING TO THE BUSINESS OPERATIONS OF NABCO CORPORATION

Some of the facts regarding Nabco Corporation have already been set forth, and there is no need to repeat those facts here.

Nichols personally owned some of the office equipment which was used by Nabco Corporation. However, that corporation did not pay Nichols for the use of the equipment.

Nab estimated that Nabco Corporation had 10 or 12 truck vans in December 1981. Most of those vans had writing on them at that time. Nab said that the name "NABCO CORPORATION" appeared on some of the vans, and "I believe there was one or two that had Nabco Electric on them." Those vans also had a distinctive company symbol on them.

Introduced into evidence as General Counsel's Exhibit 19 were copies of certain pages from the 1980-81 "yellow pages" telephone directory for Portland. On page 531 of the directory, there is listed, "Nabco Electric Corp." with an address and telephone numbers, and also a request to "Please See Advertisement Page 528." On page 528 of the directory, there appears an advertisement which, among other things, lists the same address and telephone number, and the name of the company appears as "Nabco Electric Corp."

Nab prepared the bids for jobs on behalf of Nabco Corporation. He assigned the employees to work on specific jobs. When an employee needed to request time off from work, the employee went to Nab for permission to be absent. Sometimes Nab telephoned the union office and requested that employees be sent to work for Nabco Corporation. However, he said, "anyone from the office could call for a man." Nab said that Nichols had not called the union office for employees. Nab was the one who laid off the employees when there was a lack of work.

Allan Minor began working for Nabco Corporation in September 1976 as an apprentice electrician. He was hired at that time by Nab. In July 1980, Minor was promoted to the position of journeyman electrician. As a result of a lack of work, he was laid off during September and October 1980, but Minor was rehired by Nabco Corporation after those 2 months in his same job position. During his employment with Nabco Corporation, Minor was a member of the Union, and he worked under the coverage of collective-bargaining agreements pertaining to journeyman electricians.

On December 30, 1981, Nab held a meeting in his office with the employees of Nabco Corporation. Present were: Nab, Nichols, Burt Nichols, Marvin Schmutzler, John Cossu, D.W. Sage, Carl Johansen, and Minor. The meeting lasted for about 15 to 20 minutes.

According to Minor, Nab "stated that he was no longer going to have his current company and was going to close down the shop and open up a non-union shop, WCN Corporation, on the 4th of the following year, 1982. And he gave all of us our checks and our termination slips, and he stated that we were all good men and would like to have us all back. And he offered a wage package, he stated, pretty close to the same that was currently as of December and some sort of health and welfare package which he didn't state as to what it was."

Introduced into evidence as General Counsel's Exhibit 10 was a copy of a termination slip issued to Minor and dated December 30, 1981. The document lists "Nabco Corporation" as the contractor and "discontinuance of Nabco Corp." as the reason for the termination of Minor. A similar termination slip, which had been issued on the same date to Cossu, was introduced into evidence as General Counsel's Exhibit 11. Introduced into evi-

dence as General Counsel's Exhibit 37 through 40 were copies of termination slips dated December 30, 1981, and issued by "Nabco Corporation" to: Burt Nichols, Schmutzler, Sage, and Johansen.

Cossu had worked for Nabco Corporation as a journeyman electrician under the union collective-bargaining agreement. At the time of his termination on December 30, 1981, Cossu was earning \$19.55 an hour plus fringe benefit payments. During the time of his employment with Nabco Corporation, Cossu did not hire or fire employees, or recommend the hiring or firing of employees. He said that he had not possessed a supervisor's license with a public agency.

Mildred Powell began working for Nabco Corporation in September 1980. She performed secretarial duties and related office work. Powell occupied one of the desks in the office area, which was located behind a counter. Another office employee, Tammy Rundee, had a desk in the same area until she left the Company after the first of the year in 1981. Powell said that Nichols also had a desk in the office area, and that Nab was the only one at the Company who had a private office. When Powell was terminated by Nab on December 30, 1981, she said that Nab told her, "The corporation no longer existed or was no longer going to operate."

Introduced into evidence as General Counsel's Exhibit 27 were copies of the payroll records for 1981 for Nabco Corporation and for WCN Corp. Introduced into evidence as General Counsel's Exhibit 43 was a copy of a commerce questionnaire dated February 18, 1982, and filed by Nab on behalf of Nabco Corporation and WCN Corp. The document indicates that the gross revenues of those corporations equaled or exceeded \$500,000 during the last 12 months prior to that report. The document also indicates that those corporations received gross revenues from sales or performance of services to customers outside the State of Oregon in the amount of \$30,300. According to Nab, Nabco Corporation and WCN Corp. are no longer in the electrical contracting business.

V. CERTAIN MATTERS PERTAINING TO THE BUSINESS OPERATIONS OF WCN CORP.

Nabco Corporation changed its corporate name to WCN Corp. on November 20, 1981. (See G.C. Exh 17.) WCN Corp. is a wholly owned subsidiary of Nabco Industries, Inc. Nab is the president of WCN Corp., and Nichols is the vice president and secretary-treasurer of WCN Corp.

It was admitted in the pleadings that WCN Corp. was formerly known as Nabco Corporation, and that those corporations constitute a single corporate entity. (See par. 2(d) of the General Counsel's complaint and par. 6 of Respondents' answer to the complaint.)

A profit and loss statement for WCN Corp. as of December 31, 1981, was introduced into evidence as General Counsel's Exhibit 26. That document reveals a loss of \$21,001.48 at that time. WCN Corp. paid \$30,000 in rent during the year 1981. (See G.C. Exh. 26.) Nab indicated that to his knowledge the rental expense did not include anything other than the rental for the facilities at 7530

Southeast Foster in Portland. As indicated previously, those facilities were owned by Nabco Industries, Inc.

VI. CERTAIN MATTERS PERTAINING TO THE BUSINESS OPERATIONS OF NABCO ELECTRIC CORP.

Nabco Electric Corp. was incorporated in December 1981. It is engaged in the electrical contracting business. According to Nab, Nabco Electric Corp. performs the same type of residential and small commercial electrical contracting as was formerly performed by Nabco Corporation.

Nab is the president of Nabco Electric corp., and Nichols is the secretary-treasurer of Nabco Electric Corp. Nab is also the registered supervisor for Nabco Electric Corp., and he had previously been the registered supervisor for Nabco Corporation and WCN Corp. Introduced into evidence as General Counsel's Exhibit 25 was a copy of a letter dated January 4, 1982, on the letterhead of "NABCO ELECTRIC CORP." from Nab to the chief electrical inspector of the city of Portland. In part, it states:

Nabco Corporation has changed its name to W C N Corp. and will no longer be in the contracting business of electrical wiring. NABCO Electric Corp. has been chartered as an Oregon corporation and will be in the business of contracting electrical wiring. The Bldrs Board Registration/License number is 38721.

Walter C. Nab will be acting in the capacity of Electrical Supervisor for the firm and will be signing and be responsible for City Permits and corrections through this office.

Introduced into evidence as General Counsel's Exhibits 35 and 36 were copies of subscription agreements whereby Powell agreed to purchase 255 shares of stock in Nabco Electric Corp., and Nab agreed to purchase 245 shares of stock in Nabco Electric Corp. Both Powell and Nab subsequently purchased those amounts of stock for \$255 and \$245, respectively.

The "Minutes of Organizational Meeting of Directors of Nabco Electric Corp." were introduced into evidence as General Counsel's Exhibit 32. Powell and Nab are the two directors of the corporation. The bylaws of that corporation were introduced into evidence as General Counsel's Exhibit 33. Introduced into evidence as General Counsel's Exhibit 31 was a copy of a document whereby Nabco Industries, Inc., consented to the use of the name "Nabco Electric Corp." by the latter corporation.

According to both Powell and Nab, Nabco Electric Corp. has not received any loans from any source. The corporation's sole source of capital has resulted from the issuance of the shares of stock. Nabco Electric Corp. set up its own accounting and bookkeeping, and secured its own tax identification numbers and unemployment insurance accounts.

Nichols has made a loan of a certain amount of money to Nabco Corporation, and she, in turn, received certain promissory notes from that corporation. At the hearing Nichols did not recall the amount of the money in-

volved, but she said that it was less than \$20,000. Subsequently, on January 4, 1982, Nichols received title from Nabco Corporation to certain motor vehicles and shop equipment, including tools, work tables, benches, and tire equipment, in satisfaction of that corporation's promissory notes which Nichols held. (See G.C. Exh. 12.) However, Nichols also assumed debt on those vehicles which she said was in excess of \$27,000. The promissory notes no longer existed at the time of the hearing. The promissory notes received as General Counsel's 13 are other promissory notes from Nabco Corporation to Nichols in the total amount of \$21,192.50.

In January 1982, Nichols leased the vehicles and some of the shop equipment, which she had received from Nabco Corporation, to Nabco Electric Corp. for \$3,500 a month. The lease agreement between Nichols and Nabco Electric Corp. was not in writing. The rest of the shop equipment was stored by Nichols in a warehouse which is owned by Nabco Industries, Inc. Nichols pays no rent to Nabco Industries, Inc., for the use of its warehouse space.

In January 1982, the writing on the vans was changed to "Nabco Electric," but the vans still had the distinctive Nabco corporation symbol or logo on them.

Nabco Electric Corp. pays \$500 a month for rental of the facilities which it occupies, which, as indicated earlier, is the same as the address for Nabco Industries, Inc., Nabco Corporation, and WCN Corp. Nabco Electric Corp. does not have any written rental agreement.

At the end of December 1981 when Nabco Corporation terminated its employees, there were three jobs in progress which had not been completed. Nab explained at the hearing, "We called the people up and told them we could not do their work." He also testified, "No, we told them we were going to be in business as Nabco Electric Corporation." Nab said that the contracts to perform the work on those three jobs were canceled by Nabco Corporation, and that there was competitive bidding to complete that work. All three of those jobs subsequently were completed by Nabco Electric Corp.

Nab performs the work on bids for Nabco Electric Corp., and he hires employees to work for that corporation. Either Nab or Powell make the assignments of work to the employees. If employees of Nabco Electric Corp. desire to have permission to be off from work, they come to Nab to ask for such permission. Nab is the one who makes the decision to tell employees not to come to work for a day or two due to lack of work, and he is the one who advises the employees of that fact.

On January 10, 1982, when Cossu went to "the Nabco facilities," he observed no changes in the facilities. He had a conversation at that time with Nab, Nichols, Powell, and Burt Nichols. Cossu asked Nab what he was offering the new employees. Nab replied that he was offering \$18 an hour. Burt Nichols then asked about welfare and things of that nature. According to Cossu, Dorothy Nichols said she was going to wait until there were at least 10 employees in order "to obey the law."

Nabco Electric Corp. has the same telephone number listed in the Portland directory as was listed for Nabco Corporation. Introduced into evidence as General Coun-

sel's Exhibit 18 were copies of certain pages from the 1982 edition of the "yellow pages" of the telephone directory for Portland. On page 518 of the directory there is listed "Nabco Electric Corp." with an address, telephone numbers, and a request to "Please See Advertisement Page 515." On page 515 of the directory, there appears an advertisement which, among other things, lists the same address and telephone numbers as on page 518, but the name of the Company appears in the advertisement as "Nabco Corporation" and underneath that appears "ELECTRIC DIVISION."

Introduced into evidence as General Counsel's Exhibit 28 were copies of the payroll records of Nabco Electric Corp. On January 4, 1982, Powell was employed by Nabco Electric Corp. She was hired by Nab, and she worked in the same office area behind the counter where she had worked for Nabco Corporation in 1981. Powell said her job duties were increased in that she performed "more of the bookkeeping duties that I didn't do before," which for Nabco Corporation had been performed by Nichols or Rundee. Four out of six employees of Nabco Corporation were employed by Nabco Electric Corp. They are Burt Nichols, Johansen, Sage, and Schmutzler.

Nabco Electric Corp. has not made any payments to the union trust funds. Introduced into evidence as General Counsel Exhibit 30 was a copy of a document entitled, "Health & Accident and Medical Reimbursement Plan for Nabco Electric Corp."

VII. CERTAIN MATTERS PERTAINING TO THE REFUSAL TO ABIDE BY THE COLLECTIVE-BARGAINING AGREEMENTS

About 4 p.m., on January 7, 1982, Hall and Joy went to Nab's office where they met with Nab and Nichols. In Hall's opinion, the meeting on that occasion was amiable. He estimated that the meeting lasted about 40 or 45 minutes.

Because Hall had heard that Nab had terminated all of the employees, Hall asked Nab what his position was and Hall also asserted that Nab was signatory to a continuing collective-bargaining agreement. According to Hall, Nab replied, "they no longer had an agreement with Local 48." Hall responded that he believed they did, and he expressed the view there was a continuing collective-bargaining agreement in full force and effect. Hall asked if Nab was still in the electrical contracting business. Nab answered, "yes." Hall asked what the name of the new company was, and, according to Hall, Nab replied, "You'll find out soon enough."

Next in the meeting there was general discussion regarding the increase which had been negotiated between NECA and the union. According to Hall, Nab stated "he was out of business. And so, he had, you know, closed out the company as of the end of the year and reopened with a new company, therefore voiding the agreement." Hall told Nab that he felt that Nab was in violation of the National Labor Relations Act; suggested that Nab check further with counsel on this matter, and stated it was the Union's intent "to proceed to the fullest extent of the law to maintain the integrity of the collective bargaining agreement."

Hall recalled that Nab told him at the meeting that he could no longer compete as a union shop due to the high cost of the negotiated agreement. The meeting concluded with both parties adhering to their own previously expressed positions.

A copy of a letter dated June 28, 1982, from the attorney for the Respondents to Neca was introduced into evidence as General Counsel's Exhibit 42. In part, the document states:

RE: WNC, Nabco

Dear

The officers of the captioned have directed me at this time to give notice that the captioned intend to and now give notice of withdrawal from any and all membership and/or other connection, direct or indirect, with NECA.

Further, I am directed to give notice and herewith give notice that the captioned do now withdraw any and all bargaining authority which may heretofore have been granted to NECA or its affiliates.

The effective date of the withdrawal of membership or affiliation and of bargaining rights shall be at the earliest time permitted under the existing contract(s) or under applicable law.

At the bottom of the letter appears, "APPROVED: WCN, NABCO" and underneath that the signature of Nab as the "Authorized Officer."

VIII. CONCLUSIONS

In considering the evidence presented in this proceeding, it is helpful to look for guidance to the Board's decision in *Upshur Enterprises*, 259 NLRB 1323, 1324 (1982), where the Board held:

The legal principles to be applied in determining whether two factually separate employers are in fact *alter egos* are well settled. Although each case must turn on its own facts, we generally have found *alter ego* status where the two enterprises have "substantially identical" management, business purpose, operation, equipment, customers, and supervision, as well as ownership.³

³ *Crawford Door Sales Company*, 226 NLRB 1144 (1976). Also see *Big Bear Supermarkets #3*, 239 NLRB 179 (1978); *Edward J. White, Inc., and its alter ego, Repairs, Inc.*, 237 NLRB 1020 (1978); *Ramos Iron Works, Inc., and Rasol Engineering*, 234 NLRB 896 (1978); *Co-Ed Garment Co. and its Alter Ego Delta Manufacturing Corporation*, 231 NLRB 848 (1977).

In its decision in *Bryar Construction Co.*, 240 NLRB 102 (1979), the Board adopted the findings, conclusions, and recommended Order of Administrative Law Judge Bernard Ries, who stated at 103 and 104:

In determining whether two or more businesses are sufficiently integrated so that they may be fairly treated, for jurisdictional and other purposes, as a single enterprise, the Board looks to four principal

factors: (1) common management; (2) centralized control of labor relations; (3) interrelation of operations; and (4) common ownership or financial control. *Radio and Television Broadcast Technicians Local Union 1264 v. Broadcast Service of Mobile, Inc.*, 380 U.S. 255, 256 (1965); *Sakrete of Northern California Inc. v. N.L.R.B.*, 332 F.2d 902, 905, fn. 4 (9th Cir. 1964). "The Board has determined that no single criterion is controlling, although it considers the first three, which evidence operational integration, more critical than the fourth, common ownership." *N.L.R.B. v. Triumph Curing Center and M. F. Lee d/b/a Lee's Sewing Company, Inc.*, 571 F.2d 462, 468 (9th Cir. 1978), enf. 222 NLRB 627 (1976).

In connection with the foregoing, see also the Board's decision in *Nelson Electric*, 241 NLRB 545 (1979).

Without repeating here all of the numerous findings of fact set forth earlier in this decision, it will be recalled that the evidence is clear as to ownership of Nabco Industries, Inc., Nabco Corporation, and WCN Corp. Nichols has owned 95 percent of the shares of stock of Nabco Industries, Inc., and Nab has owned 5 percent of the shares of stock of that corporation. Since January 2, 1975, Nabco Corporation has been a wholly-owned subsidiary of Nabco Industries, Inc. Prior to that time, Nab had been the owner of Nabco Corporation. Subsequently, Nabco Corporation changed its name to WCN Corp., which continued the business as a wholly owned subsidiary of Nabco Industries, Inc. Thus, except for the change in corporate name, Nabco Corporation and WCN Corp. should be considered to be the same entity.

The ownership of Nabco Electric Corp. is ostensibly different from that of the other two Respondents, Nabco Corporation and WCN Corp. Nab paid \$245 for 245 shares of stock in Nabco Electric Corp., and Powell paid \$255 for 255 shares of stock in that corporation. As a result, Powell became the majority stockholder of Nabco Electric Corp. by investing merely \$10 more than Nab did. As indicated above, Powell was not a stockholder in the other corporations. However, Powell is the niece of Nichols, and she resided at Nichols' house for a period of time until June 1981. Powell was an office employee of Nabco Corporation until she was terminated on December 30, 1981, by Nab, but then she was hired by Nab in January 1982 to work in the office of Nabco Electric Corp. with additional bookkeeping duties. Powell's family relationship to the owner of 95 percent of the shares of stock in Nabco Industries, Inc., is a factor which cannot be ignored or glossed over in these circumstances.

With regard to the officers of Nabco Electric Corp., it will be recalled that Nab is the president of that corporation, which is the same position he has held with the other corporations involved herein, and Nichols is the secretary-treasurer, which is one of the two positions she has held with the other corporations involved herein. In addition to being an officer of Nabco Electric Corp., Nichols has a verbal agreement with that corporation to pay her \$3,500 a month for the lease of vans and some shop equipment, which Nichols had received from Nabco Corporation in satisfaction of some promissory

notes she held from that corporation. There is another verbal agreement for payment of \$500 a month rent to Nabco Industries, Inc., by Nabco Electric Corp. for the use of the facilities where Nabco Electric Corp. is located. All four of the corporations previously mentioned herein—Nabco Industries, Inc., Nabco Corporation, WCN Corp., and Nabco Electric Corp.—have had offices located at the same address.

In addition to their being officers in the four corporations mentioned herein, Nab and Nichols together hold certain promissory notes in the amount of \$109,825 from Nabco Industries, Inc., made payable to "Walter C. Nab and/or Dorothy C. Nichols and upon the death of either of them, then to the order of the survivor." Nab conveyed certain real property to Nichols on May 1, 1981, and he reserved a life estate for himself in the property. As noted in the findings of fact, Nab has lived at Nichols' residence since 1972.

Nab is the registered supervisor of Nabco Electric Corp., which is the same designation he held for Nabco Corporation and WCN Corp. Nab is the one who prepares the bids for Nabco Electric Corp., which is one of the functions he performed for the other two Respondents. In hiring employees, assigning work to employees, granting time off from work as requested by employees, and in making the decision to lay off employees, Nab performs the functions for Nabco Electric Corp. as he did for the other two Respondents. In the day-to-day operation of Nabco Electric Corp., I conclude that Nab is the one who performs those managerial tasks and supervisory tasks as he did with the other two Respondents.

I also conclude that the evidence shows that Nabco Electrical Corp. is engaged in the same type of business of residential and small commercial electrical contracting as was Nabco Corporation and WCN Corp. The fact that Nabco Electric Corp. successfully bid upon and completed three projects, which Nabco Corporation and WCN Corp. had not finished, also indicates that Nabco Electric Corp. continued the same type of business as the other two Respondents and with three of the same customers. It should be noted that Nabco Electric Corp. initially hired four of the six employees of Nabco Corporation. Thus, a majority of the employees were the same. As mentioned above, some of the vans and other shop equipment which Nichols acquired from Nabco Corporation were leased for use by Nabco Electric Corp. Thus, the equipment utilized was substantially the same as before.

Certain statements made by Nab are revealing of an intention to change the operation of the business from a union company to a nonunion company. For example, Nab's statement on December 30, 1981, to the employees of Nabco Corporation indicates that he was going to close down that Company and reopen on January 4, 1982, as a nonunion company. (See sec. IV, herein, for the full conversation.) Nab's statement to Hall on January 7, 1982, with regard to his actions and the collective-bargaining agreement was that Nab had "closed out the company as of the end of the year and reopened with a new company, therefore voiding the agreement." (See sec. VII, herein, for the full details.) Nab expressed his

view that he could no longer compete as a union shop due to the cost of the Union's contract. Note also the statements made by Nab to the persons for whom Nabco Corporation was performing electrical work. He said, "We called the people up and told them we could not do their work." Nab also stated, "No, we told them we were going to be in business as Nabco Electric Corporation." (See sec. VI, herein.) I conclude that the foregoing statements, when considered in the context of the other matters discussed herein, show that the motivation for the termination of the six alleged discriminatees by Nabco Corporation on December 30, 1981, was an anti-union motivation, and that their termination violated Section 8(a)(1) and (3) of the Act. While four of those six employees were subsequently hired by Nabco Electric Corp., they were told that the Company would operate as a nonunion company. I conclude that the December 30, 1981, statement to employees of Nabco Corporation by Nab independently violated Section 8(a)(1) of the Act.

After considering all of the foregoing matters, I conclude that Nabco Corporation, WCN Corp., and Nabco Electric Corp. have "substantially identical" management, business purpose, operation, equipment, customers, and supervision, as well as ownership." See *Upshur Enterprises, supra*. Accordingly, I conclude that those three corporations are *alter egos*, as alleged by the General Counsel, and that the Respondents have violated Section 8(a)(1) and (5) of the Act by their refusal to recognize and bargain with the Union and by their refusal to abide by the terms of the current collective-bargaining agreements with the union, which are described in section II of this decision.

CONCLUSIONS OF LAW

1. Nabco Corporation/WCN Corporation and Nabco Electric Corp. are *alter egos* and constitute a single employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The National Electrical Contractors Association is an association which represents employers, including the Respondents who have authorized NECA to represent them, in negotiating collective-bargaining agreements with the Charging Party Union. The employers represented by NECA collectively are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. The Union is a labor organization within the meaning of Section 2(5) of the Act.

4. At all times material herein, the Union has been the exclusive collective-bargaining representative of the employees in the units described below:

(a) All general foremen, foremen, lead cable splicers, journeymen and apprentices employed by members of NECA, including Respondents, excluding all other employees, guards and supervisors as defined in the Act.

(b) All material handlers employed by members of NECA, including Respondents, excluding all other employers, guards and supervisors as defined in the Act:

5. NECA and the Union are parties to collective-bargaining agreements which have effective dates from January 1, 1982, through December 31, 1984, and which agreements contain terms and conditions of employment applicable to the employees in the units described above.

6. Respondents have engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by telling employees on December 30, 1981, that Respondents were closing the facility at that time and would reopen the facility as a nonunion shop on January 4, 1982, under a different company name.

7. Respondents have engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act by discharging the following named employees on December 30, 1981, because of their union membership and activities: John Cossu, Carl Johansen, A. V. Minor, Burt Nichols, D. W. Sage, and Marvin Schmutzler.

8. Respondents have engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act by refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the units described above, and by failing to abide by the terms and conditions of the current collective-bargaining agreements described above.

9. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Since I have found that Respondents have engaged in certain unfair labor practices within the meaning of Section 8(a)(1), (3), and (5) of the Act, I shall recommend to the Board that Respondents be ordered to cease and desist from engaging in such unfair labor practices.

I shall also recommend to the Board that Respondents be ordered to take certain affirmative action in order to effectuate the policies of the Act. Included in such affirmative action will be a make-whole reinstatement remedy for the six persons found to have been terminated because of their union membership and activities. As indicated previously, four of those discriminatees were hired by NABCO Electric Corp. The hearing in this proceeding properly did not inquire into compliance matters because, of course, no determination had been made at that time as to the merit, or lack of merit, of the General Counsel's complaint allegations. Accordingly, I shall recommend to the Board that the usual remedy be provided for in the Board's Order, and that questions of whether the four persons were fully reinstated or suffered a loss of wages or benefits be left to the compliance stage of the proceeding.

ORDER¹

The Respondents, Nabco Corporation/WCN Corporation and Nabco Electric Corp., Portland, Oregon, their officers, agents, successors, and assigns, shall:

¹ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

1. Cease and desist from:

(a) Telling employees that Respondents were closing the facility and would reopen the facility as a nonunion shop under a different company name.

(b) Terminating employees because of their union membership and activities.

(c) Refusing to recognize and bargain with International Brotherhood of Electrical Workers Local No. 48 as the exclusive collective-bargaining representative of the employees in the units described below, and failing to abide by the terms and conditions of the current collective-bargaining agreements negotiated on behalf of the Respondents by National Electrical Contractors Association with the union. The unit descriptions are:

(1) All general foremen, foremen, lead cable splicers, journeymen and apprentices employed by members of NECA, including the Respondents, excluding all other employees, guards and supervisors as defined in the Act.

(2) All material handlers employed by members of NECA, including the Respondents, excluding all other employers, guards and supervisors as defined in the Act.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Make whole John Cossu, Carl Johansen, A. V. Minor, Burt Nichols, D. W. Sage, and Marvin Schmutzler for their losses of wages and benefits resulting from Respondents' termination of them. Backpay is to be computed in accordance with the Board's decision in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with the interest and backpay to be computed in accordance with the Board's decision in *Isis Plumbing Co.*, 138 NLRB 716 (1962); *Florida Steel Corp.*, 231 NLRB 651 (1977), and *Olympic Medical Corp.*, 250 NLRB 146 (1980).

(b) Offer immediate and full reinstatement to John Cossu, Carl Johansen, A. V. Minor, Burt Nichols, D. W. Sage, and Marvin Schmutzler to their former positions of employment with Respondents without the loss of their seniority or any other benefits, but, if their former positions of employment no longer exist, then offer them substantially equivalent positions of employment with Respondents without loss of their seniority or other benefits.

(c) Expunge from Respondents' files any reference to the terminations of the six persons named above, and notify them in writing that this has been done, and that evidence of the terminations will not be used as a basis for future personnel actions against them.

(d) Recognize and, upon request, bargain collectively with International Brotherhood of Electrical Workers Local No. 48 as the exclusive collective-bargaining representative of the employees in the two units described previously.

(e) Abide by the terms and conditions of the current collective-bargaining agreements negotiated on behalf of Respondents by the National Electrical Contractors Association with the union.

(f) Make whole the employees who have incurred losses of wages and benefits because of Respondents' failure to abide by the terms and conditions of the collective-bargaining agreements with the Union, which agreements have been described previously. Such monetary amounts are to be computed in accordance with the Board's decision in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest thereon as prescribed in *Isis Plumbing Co.*, 138 NLRB 716 (1962); *Florida Steel Corp.*, 231 NLRB 651 (1977), and *Olympic Medical Corp.*, 250 NLRB 146 (1980). In addition, Respondents shall pay the contractually agreed-upon trust funds in the amounts of the contributions which Respondents failed to make on behalf of Respondents' unit employees in accordance with the Board's decision in *Fox Painting Co.*, 263 NLRB 437 (1982), with any interest applicable to such payments to be computed in accordance with the Board's decision in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

(g) Preserve and, upon request, make available to Board agents for examination and copying, all of the records which are needed to analyze and determine the amounts of money due under the terms of this Order.

(h) Post at its Portland, Oregon, facility, copies of the attached notice marked "Appendix."²

The Regional Director of Region 19 of the Board will provide sufficient copies of the notice to Respondents. After the notices have been signed by an authorized representative of Respondents, the notices shall be posted for 60 consecutive days thereafter, in conspicuous places, including all of the places where other notices to employees are customarily posted. Respondents shall take reasonable steps to ensure that the Board's notice is not altered, defaced, or covered by any other material during the posting period.

(i) Within 20 days from the date of this Order, notify the Regional Director of Region 19 of the Board, in writing, what steps Respondents have taken to comply with the terms of this Order.

² In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT tell employees that we are closing our facility and will reopen our facility as a non-union shop under a different company name.

WE WILL NOT terminate our employees because of their union membership or activities.

WE WILL NOT refuse to recognize and bargain with International Brotherhood of Electrical Workers Local No. 48 as the exclusive collective-bargain-

ing representative of the employees in the units described below, and WE WILL NOT fail to abide by the terms and conditions of the current collective bargaining agreements negotiated on our behalf by the National Electrical Contractors Association with the Union. The unit descriptions are:

(1) All general foremen, foremen, lead cable splicers, journeymen and apprentices employed by members of NECA, including the Respondents, excluding all other employees, guards and supervisors as defined in the Act.

(2) All material handlers employed by members of NECA, including the Respondents, excluding all other employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by the National Labor Relations Act.

WE WILL make whole John Cossu, Carl Johansen, A. V. Minor, Burt Nichols, D. W. Sage, and Marvin Schmutzler for their losses of wages and benefits which resulted from our termination of them.

WE WILL offer the six persons named above immediate and full reinstatement to their former positions of employment without the loss of their seniority or any other benefits, but, if their former positions of employment no longer exist, then WE

WILL offer them substantially equivalent positions of employment without the loss of their seniority or any other benefits.

WE WILL expunge from our files any reference to the terminations of the six persons named above, and WE WILL notify them in writing that this has been done; and that evidence of the terminations will not be used as a basis for future personnel actions against them.

WE WILL recognize and, upon request, bargain collectively with International Brotherhood of Electrical Workers Local No. 48 as the exclusive collective-bargaining representative of the employees in the two units described previously.

WE WILL abide by the terms and conditions of the current collective bargaining agreements negotiated on our behalf by the National Electrical Contractors Association with the Union.

WE WILL make whole the employees who have incurred losses of wages and benefits because of our failure to abide by the terms and conditions of the collective-bargaining agreements with the Union, which have been described previously, and WE WILL pay the contractually agreed-upon trust funds in the amounts of the contributions which we failed to make on behalf of our unit employees.

NABCO CORPORATION/WCN CORPORATION
AND NABCO ELECTRIC CORP.